

# Re Hanna

IN THE MATTER OF:

**The Rules of the Investment Industry Regulatory Organization of  
Canada (IIROC)**

**and**

**The By-Laws of the Investment Dealers Association of Canada (IDA)**

**and**

**John Lloyd Hanna**

2012 IIROC 71

Investment Industry Regulatory Organization of Canada  
Hearing Panel (Saskatchewan District)

Hearing: December 5, 2012  
Decision: December 18, 2012

**Hearing Panel:**

Garrett Wilson, Q.C. - Chair, William J. Welton, Eric Wray

**Appearances:**

David McLellan - IIROC

Gil Gauthier, C.A. - IIROC

Meghan R. McCreary - John Lloyd Hanna

John Lloyd Hanna, in person

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## REASONS FOR DECISION

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### INTRODUCTION

¶ 1 The Hearing Panel was established and convened pursuant to IIROC Rules 15 and 20.36 to consider a Settlement Agreement. Both Mr. McLellan, counsel to IIROC, and Ms. McCreary, counsel to Hanna, advised that the Panel had been properly appointed, that service of the Notice of Hearing required by Rule 15.1 had been properly effected and that the Panel had full jurisdiction to proceed.

¶ 2 The Settlement Agreement presented to us had been executed by IIROC and Mr. Hanna on October 24, 2012. It contains the following agreed statement of facts.

### Factual Background

#### Overview

¶ 3 The Respondent John Lloyd Hanna (“Hanna”) was a Registered Representative responsible for the account of client VF, who was 68 years old, retired and had limited investment knowledge. The Respondent failed to know his client, and failed to use due diligence to ensure that recommendations were suitable for her circumstances. Only a small percentage of the securities in her account were allocated to lower risk, income producing securities.

## **Registration History**

¶ 4 Hanna had been a Registered Representative since 2000. At all material times, he was a Registered Representative with Wellington West Capital Inc. (“Wellington”) in Regina.

## **Client – VF**

### Registered Account

¶ 5 In or around April, 2006, VF and her husband, JF, opened RRSP/RRIF accounts with Hanna. VF and JF were retired farmers, and aged 68 and 73 respectively at the time. JF died in May, 2008.

¶ 6 VF was looking to Hanna for financial advice and direction as she was retired and relied on her investments for income. Her income of \$68,000 per year (combined with JF) was primarily composed of CPP payments and RRIF withdrawals.

¶ 7 The 2006 New Client Application form (“NCAF”) for her RRSP, which was signed by VF, states that she had a total net worth of \$540,000. Although she had limited investing experience, the NCAF listed her investment knowledge as “good.”

¶ 8 The 2006 NCAF lists investment objectives of 15% lower risk income producing securities, 70% moderate to higher risk income producing securities, 15% moderate risk growth oriented securities, and 0% higher risk speculative securities.

¶ 9 In December, 2007, the investment objectives and risk tolerance parameters for VF were updated to 0% lower risk income producing securities, 80% moderate to higher risk income producing securities, 20% moderate risk, growth oriented securities and 0% higher risk, speculative securities.

### Joint Cash Account

¶ 10 In March, 2007, VF and JF also opened a joint cash account with Hanna. The NCAF for this account lists parameters of 0% lower risk income producing securities, 100% moderate to higher risk income producing securities, 0% moderate risk growth oriented securities, and 0% higher risk speculative securities.

¶ 11 In December, 2007, the investment objectives and risk tolerance parameters were updated to 0% lower risk income producing securities, 80% moderate to higher risk income producing securities, 15% moderate risk growth oriented securities, and 5% higher risk speculative securities.

¶ 12 Shortly after JF's death in May, 2008, the objectives of this account were again updated to low risk 10%, medium risk 80%, and high risk 10% and 100% balanced (defined as generating a level of income, all the while allowing for long-term growth).

### Unsuitable Investments

¶ 13 Despite VF's reliance on her investments for income, her age and life circumstances, during the relevant period approximately 10% of the securities in all accounts were allocated to lower risk income producing securities. Approximately 84% of securities were allocated to the two categories of “Moderate to Higher Risk, Income Producing Securities” and “Moderate risk, growth oriented securities”. The remaining 6% of the accounts was allocated to high risk, speculative securities.

¶ 14 In addition, approximately 38% of the securities held in VF's accounts were new issues. VF's accounts were fee based and did not generate commissions beyond the flat fee. However, when a new issue was purchased, the issuer paid a commission, which was credited to Hanna. The increased revenue from the purchase of new issues benefitted Hanna as it created the potential for further entitlement to firm compensation for Hanna.

¶ 15 VF had limited investment knowledge and she relied upon Hanna for investment advice and recommendations.

¶ 16 With just 10% of securities allocated to lower risk, income producing securities, the stated investment objectives and risk tolerance parameters were too risky and were not consistent with VF's true financial

situation, investment knowledge, investment objectives and risk tolerance.

¶ 17 Over the 40 months of the life of the accounts, VF's portfolio declined approximately 11.6%, reflecting a loss of approximately \$61,012.

¶ 18 Hanna cooperated fully with IIROC's investigation of this matter. Civil matters between VF and Hanna were settled prior to the parties entering into this Settlement Agreement.

### **Contravention**

¶ 19 Based upon the above Statement of Fact, Hanna has admitted to the following contravention of IIROC Rules, Guidelines, IDA By-Laws, Regulations or Policies:

- (a) Between April, 2006 and August, 2009, he failed to use due diligence to learn and remain informed of the essential facts relative to his client, VF, contrary to IIROC Rule 1300.1(a) (IDA Regulation 1300.1(a) prior to June 1, 2008);
- (b) Between April, 2006 and August, 2009, he failed to use due diligence to ensure that recommendations were suitable for his client, V F, based on factors including the client's financial situation, investment knowledge, investment objectives and risk tolerance, contrary to IIROC Rule 1300.1(q) (IDA Regulation 1300 1.(q) prior to June 1, 2008).

### **Terms of Settlement**

¶ 20 IIROC and Hanna have agreed to the following terms of settlement:

- (c) Hanna agrees to pay a fine to IIROC in the sum of thirty thousand dollars (\$30,000.00);
- (d) Hanna shall be suspended from registration with IIROC in any capacity for a period of thirty (30) days commencing upon the acceptance of this Settlement Agreement;
- (e) Hanna shall be subject to a period of six (6) months of close supervision commencing upon the expiry of the period of suspension above;
- (f) Hanna agrees to pay costs to IIROC in the sum of two thousand, five hundred dollars (\$2,500.00);
- (g) Hanna shall re-write and successfully complete the Conduct and Practices Handbook examination within 12 months of the acceptance of this Settlement Agreement.

### **Submissions**

¶ 21 Both Mr. McLellan and Ms. McCreary urged us to accept the Settlement Agreement. We were referred to a selection of previous decisions in similar cases and to the IIROC Dealer Member Disciplinary Sanction Guidelines, a compilation of principles and examples of sentencing ranges drawn from an extensive review of the history of disciplinary actions in the investment industry.

### **Consideration**

¶ 22 At the conclusion of counsel submissions, the Panel retired to consider the Settlement Agreement.

¶ 23 We found the facts as outlined in the Settlement Agreement, and as only slightly amplified by counsel submissions, to be somewhat wanting in three areas. First, no mention is made of the participation of, or responsibility taken by, Hanna's employer firm, particularly with respect of the civil settlement. Secondly, we were given no detail whatsoever on the civil settlement. And, thirdly, although the fact that 38% of the securities held in the accounts in question were new issues was emphasized, no information was provided as to the nature of those new issues. We noted that not all new issues would necessarily be inappropriate for the accounts, Government of Canada bonds being an example.

¶ 24 The agreed facts identified a loss of \$61,012 in VF's accounts over 40 months, but on inquiry we were advised that the account management fee was included in that total. We had some concern as to whether that was appropriate.

¶ 25 The Panel also noted that the thirty (30) day suspension, would, if we accepted the Settlement Agreement, include the Christmas and New Year's holiday season which would considerably reduce the severity of that portion of the penalty.

¶ 26 The Panel noted that our desire for further information was constrained by IIROC Rule 15.3, which provides, in part:

*Unless the parties consent, facts not contained in the Settlement Agreement cannot be referred to or disclosed to the Hearing Panel.*

¶ 27 We recognized that this provision obligated us to accept or reject the Settlement Agreement by consideration only of the facts recited therein and without speculation in those areas where we would have preferred further information. At the same time, we viewed our responsibility as an arms length tribunal seriously; we were to determine the appropriateness of the agreed sanctions and not merely 'rubber stamp' the Settlement Agreement.

¶ 28 We were referred to, and accept, the criteria expressed in *Re Derivative Services Inc.* (2000) I.D.A.C.D. No. 28, as governing our consideration of the appropriateness of the agreed penalties in this case:

- 1) *Protection of the investing public;*
- 2) *Protection of the Investment Industry Regulatory Organization's membership;*
- 3) *Protection of the integrity of the Investment Industry Regulatory Organization's process;*
- 4) *Protection of the integrity of the securities markets; and*
- 5) *Prevention of a repetition of conduct of the type under consideration.*

¶ 29 The Panel recognized that the Settlement Agreement had been negotiated and its terms agreed upon between experienced and competent counsel for both IIROC and Hanna. As the litigants themselves are far better able to protect their own interests than a third party tribunal, it would be seldom indeed that a Hearing Panel would presume to disagree with such a settlement. Our only concern was to ensure that the Settlement Agreement met the criteria enumerated in paragraph 26 above, and fell reasonably within the established range of penalties for like offences.

¶ 30 The Panel concluded that, in spite of our concerns, the Settlement Agreement between IIROC and Hanna met those criteria and fell within that established range and we so advised the parties at the hearing on December 6. These are the reasons for that decision.

**DATED** this 18<sup>th</sup> day of December, 2012.

Garrett Wilson, Q.C., Chair

William Welton, Member

Eric Wray, Member

## **SETTLEMENT AGREEMENT**

### **I. INTRODUCTION**

1. IIROC Enforcement Staff and the Respondent, John Lloyd Hanna, consent and agree to the settlement of this matter by way of this settlement agreement (“the Settlement Agreement”).
2. The Enforcement Department of IIROC has conducted an investigation (“the Investigation”) into the conduct of John Lloyd Hanna.
3. On June 1, 2008, IIROC consolidated the regulatory and enforcement functions of the Investment Dealers

Association of Canada and Market Regulation Services Inc. Pursuant to the Administrative and Regulatory Services Agreement between IDA and IIROC, effective June 1, 2008, the IDA has retained IIROC to provide services for IDA to carry out its regulatory functions.

4. The Respondent consents to be subject to the jurisdiction of IIROC.
5. The Investigation discloses matters for which the Respondent may be disciplined by a hearing panel appointed pursuant to IIROC Transitional Rule No.1, Schedule C.1, Part C (“the Hearing Panel”).

## **II. JOINT SETTLEMENT RECOMMENDATION**

6. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement.
7. The Respondent admits to the following contraventions of IIROC Rules, Guidelines, IDA By-Laws, Regulations or Policies:
  - a) Between April, 2006 and August, 2009, the Respondent failed to use due diligence to learn and remain informed of the essential facts relative to his client, VF, contrary to IIROC Rule 1300.1(a) [IDA Regulation 1300.1(a) prior to June 1, 2008];
  - b) Between April, 2006 and August, 2009, the Respondent failed to use due diligence to ensure that recommendations were suitable for his client, VF, based on factors including the client’s financial situation, investment knowledge, investment objectives and risk tolerance contrary to IIROC Rule 1300.1(q) [IDA Regulation 1300.1(q) prior to June 1, 2008];
8. Staff and the Respondent agree to the following terms of settlement:
  - a) The Respondent agrees to pay a fine to IIROC in the sum of thirty thousand dollars (\$30,000.00);
  - b) The Respondent shall be suspended from registration with IIROC in any capacity for a period of thirty (30) days commencing upon the acceptance of this Settlement Agreement;
  - c) The Respondent shall be subject to a period of six (6) months of close supervision commencing upon the expiry of the period of suspension in 8(b);
  - d) The Respondent agrees to pay costs to IIROC in the sum of two thousand five hundred dollars (\$2,500.00);
  - e) The Respondent shall re-write and successfully complete the Conduct and Practices Handbook examination within 12 months of the acceptance of this Settlement Agreement.

## **III. STATEMENT OF FACTS**

### **(i) Acknowledgment**

9. For the purposes of this Settlement Agreement only, Staff and the Respondent agree with the facts set out in this Section III and acknowledge that the terms of the settlement contained in this Settlement Agreement are based upon those specific facts.

### **(ii) Factual Background**

#### **Overview**

10. The Respondent John Lloyd Hanna (“Hanna”) was a Registered Representative responsible for the account of client VF, who was 68 years old, retired and had limited investment knowledge. The Respondent failed to know his client, and failed to use due diligence to ensure that recommendations were suitable for her circumstances. Only a small percentage of the securities in her accounts were allocated to lower risk, income producing securities.

## **Registration History**

11. Hanna has been a Registered Representative since 2000. At all material times, he was a Registered Representative with Wellington West Capital Inc. (“Wellington West”) in Regina.

### **Client - VF**

#### Registered Account

12. In or around April, 2006, VF and her husband, JF, opened RRSP/RRIF accounts with Hanna. VF and JF were retired farmers, and aged 68 and 73 respectively at the time. JF died in May, 2008.
13. VF was looking to Hanna for financial advice and direction as she was retired and relied on her investments for income. Her income of \$68,000 per year (combined with JF) was primarily comprised of CPP payments and RRIF withdrawals.
14. The 2006 New Client Application form (“NCAF”) for her RRSP, which was signed by VF, states that she had a total net worth of \$540,000. Although she had limited investing experience, the NCAF lists her investment knowledge as “good”.
15. The 2006 NCAF lists investment objectives of 15% lower risk, income producing securities; 70% moderate to higher risk, income producing securities; 15% moderate risk, growth oriented securities and 0% higher risk, speculative securities.
16. In December, 2007 the investment objectives and risk tolerance parameters for VF were updated to 0% lower risk, income producing securities; 80% moderate to higher risk, income producing securities; 20% moderate risk, growth oriented securities and 0% higher risk, speculative securities.

#### Joint Cash Account

17. In March, 2007 VF and JF also opened a joint cash account with Hanna. The NCAF for this account lists parameters of 0% lower risk, income producing securities; 100% moderate to higher risk, income producing securities; 0% moderate risk, growth oriented securities and 0% higher risk, speculative securities.
18. In December, 2007 the investment objectives and risk tolerance parameters were updated to 0% lower risk, income producing securities; 80% moderate to higher risk, income producing securities; 15% moderate risk, growth oriented securities and 5% higher risk, speculative securities.
19. Shortly after JF’s death in May, 2008, the objectives of this account were again updated to low risk 10%; medium risk 80%; and high risk 10% and 100% balanced (defined as generating a level of income, all the while allowing for long-term growth).

#### Unsuitable Investments

20. Despite VF’s reliance on her investments for income, her age and life circumstances, during the relevant period, approximately 10% of the securities in all accounts were allocated to lower risk, income producing securities. Approximately 84% of securities were allocated to the two categories of “Moderate to Higher Risk, Income Producing Securities” and “Moderate risk, growth oriented securities”. The remaining 6% of the accounts was allocated to high risk, speculative securities.
21. In addition, approximately 38% of the securities held in VF’s accounts were new issues. VF’s accounts were fee based and did not generate commissions beyond the flat fee. However, when a new issue was purchased, the issuer paid a commission, which was credited to Hanna. The increased revenue from the purchase of new issues benefitted Hanna as it created the potential for further entitlement to firm compensation for Hanna.
22. VF had limited investment knowledge and she relied upon Hanna for investment advice and recommendations.
23. With just 10% of securities allocated to lower risk, income producing securities, the stated investment

objectives and risk tolerance parameters were too risky and were not consistent with VF's true financial situation, investment knowledge, investment objectives and risk tolerance.

24. Over the 40 months of the life of the accounts, VF's portfolio declined approximately 11.6%, reflecting a loss of approximately \$61,012.
25. Hanna cooperated fully with IIROC's investigation of this matter. Civil matters between VF and Hanna were settled prior to the parties entering into this Settlement Agreement.

#### **IV. TERMS OF SETTLEMENT**

26. This settlement is agreed upon in accordance with IIROC Dealer Member Rules 20.35 to 20.40, inclusive and Rule 15 of the Dealer Member Rules of Practice and Procedure.
27. The Settlement Agreement is subject to acceptance by the Hearing Panel.
28. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
29. The Settlement Agreement will be presented to the Hearing Panel at a hearing ("the Settlement Hearing") for approval. Following the conclusion of the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement.
30. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives his/her/its right under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.
31. If the Hearing Panel rejects the Settlement Agreement, Staff and the Respondent may enter into another settlement agreement; or Staff may proceed to a disciplinary hearing in relation to the matters disclosed in the Investigation.
32. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
33. Staff and the Respondent agree that if the Hearing Panel accepts the Settlement Agreement, they, or anyone on their behalf, will not make any public statements inconsistent with the Settlement Agreement.
34. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.
35. Unless otherwise stated, any suspensions, bars, expulsions, restrictions or other terms of the Settlement Agreement shall commence on the effective date of the Settlement Agreement.

**AGREED TO** by the Respondent at the City of Regina in the Province of Saskatchewan, this 24 day of October, 2012.

**Witness**

**John Lloyd Hanna**

**AGREED TO** by Staff at the City of Calgary in the Province of Alberta, this 25 day of October, 2012.

**Witness**

**David McLellan**

Enforcement Counsel on behalf of Staff of the  
Investment Industry Regulatory Organization of  
Canada

**ACCEPTED** at the City of Regina in the Province of Saskatchewan, this 5 day of December, 2012, by the following Hearing Panel:

Per: "Eric Wray"  
Panel Member

Per: "Garrett Wilson"

Panel Chair

Per: “William Welton

Panel Member

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